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ABSTRACT

Faculty ethics are considered in relation to conflict of interest between academic work and nonacademic consulting jobs, confidentiality of research, the employment of faculty by intelligence agencies, and the need for self-regulation by the academic community. For faculty members who serve as consultants, ethical issues arise concerning the use of university facilities, time, and resources in connection with outside commitments. Researchers who initiate or orient their research to meet the sponsoring agency's need without notifying the university and the sponsoring agency face potential ethical conflicts. A researcher involved in government-sponsored research who also serves as a consultant to a federal agency faces potential conflict of interest, as does the faculty member who transfers from an academic setting to the government and back again. Campus-based and free-standing research groups face an ethical dilemma in the conduct of their research: basic intellectual and scientific values require them to publish their findings, but ethical obligations to research sources and other considerations may necessitate that some data be kept confidential. Faculty members face ethical dilemmas when they have a covert relationship with the CIA on the campus or abroad. Since ethical codes may be difficult to develop and implement, it is suggested that the academic community has an obligation to foster forums to consider the development of guidelines that address faculty's ethical concerns. (SW)

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Faculty Ethics: New Dilemmas, New Choices

by Carol Herrnstadt Shulman

In the wake of the exponential growth of federal regulations, the higher education community has recognized that the best defense against government oversight is self-regulation. Although most self-regulatory efforts center on institutional relations with government and students (El-Khawas 1978), faculty members also face similar problems. Faculty interest in regulatory issues develops from three sources. First, faculty members serve the public interest and are therefore subject to public scrutiny of their responses to a wide range of public policy questions. Second, as professionals, faculty members have the opportunity to establish standards of conduct to guide and discipline their own members as they cope with contemporary ethical problems. Finally, several specific ethical problems have developed that fuel faculty interest in the interaction between self-regulation and faculty ethical responsibilities: conflict of interest between academic work and nonacademic consulting jobs; confidentiality of research; and the employment of faculty by intelligence agencies.

Faculty are not alone in their concern about ethical quandries. Campus administrators have a direct interest in the outcomes of these ethical debates. And the public's view of faculty's ethical behavior influences public support for higher education. Similarly, the general perception that faculty can keep their own house in order makes them, and higher education as a whole, less vulnerable to outside interference in academic affairs.

Conflicts of Interest

Since the 1970's, "conflict-of-interest" questions have dominated discussions about the ethical behavior of those who hold the public trust. When the conduct of the academic profession is the issue, some accepted academic practices appear to present potential conflict-of-interest problems, with faculty consulting activities heading the list.

The academic community attributes several virtues to faculty consulting: first, consulting indicates achievement in a particular field; second, academic knowledge is transferred to social uses; and third, faculty members keep in touch with ongoing concerns of the nonacademic world and use this information for their students and their own research.

Outside consulting activities offer the additional advantage of providing faculty with extra income to augment academic salaries, which for several years have not kept pace with inflation. A survey of faculty income sources (Marsh 1979) indicates that paid consulting opportunities were the second largest source of supplemental income, after outside and summer teaching jobs. Further, about half of the faculty responding indicated that they had participated in outside consulting, although for only 29 percent did consulting represent an important source of income.

Moreover, consulting has played an increasingly larger role in academic life. Between 1962 and 1975, faculty reported a rise of 35 percent in paid consulting activity, from 13 to 48 percent (Dillon 1979). But the growing importance of faculty consulting has also led some observers to question whether faculty involvement in consulting raises issues of conflict-of-interest and of obligation that undermine public trust in and support for higher education (Jolly 1978).

Ethical issues arise in two areas: the use of university facilities, time, and resources in connection with outside commitments; and bias in research activity to favor outside consulting.

In the first area, many institutions have taken steps to safeguard university resources against possible faculty abuse by developing policies on both patents and on unpatentable information (Woodrow 1978). Unlike private employers, who wholly own the patent rights to inventions developed by their researchers, many institutions share the royalties from faculty inventions. Administrators point out that faculty "are not employed to develop patentable inventions and their salaries and promotions are not based upon the value of the inventions they do make" (Woodrow 1978). Royalty shares therefore compensate the university for the use of its facilities; as of 1978, the university share ranged from 15 to 80 percent of net royalty income at 48 major institutions (Woodrow 1978).

Public officials have raised a corollary issue: Do faculty consultants get too much total income from public funds? Since these faculty receive their institutional salaries as well as additional income from providing consulting services to the government, might this not be considered a form of "double-dipping" (Jolly 1978)?

Other observers also express concern about the potential ethical conflicts inherent in situations where faculty knowledge acquired through institutional and disciplinary work may be useful to outside consulting commitments. Dillon (1979a) offers the hypothetical conflict-of-interest case where a professor of psychology consults for a large advertising firm with university approval:

> this professor has directed a research project at the university on the effects of mass media on public attitude change. This research is sponsored in part by a grant from the American Cancer Society. . . . if the advertising firm's largest client is [a tobacco company], is the professor's consulting role in conflict with his role at the university as director of this funded project? (pp. 3-4)

In the second area, the question of research bias, the academic community has long noted the potential conflicts of interest in the faculty member's conduct of his research and his relationships with outside consulting agencies. A 1965 joint statement by the American Association of University Professors and the American Council on Education ("On Preventing . . ." 1977) identifies potential conflict situations when a faculty member is engaged in government-sponsored research; the same conflicts could also develop in other research activities. The conflict areas identified include:

Favoring of outside interests—A researcher who has outside consulting commitments faces potential ethical conflicts if, for example, he initiates or orients his research to meet the consulting agency's needs without notifying the university and the sponsoring agency; or if he purchases items needed for university research from a business in which he has an interest without disclosing that interest.

Distribution of effort—Ethical problems in research develop if the researcher, the university, and the sponsoring agency do not have a clear understanding of the amount of "intellectual effort" the faculty member will give to the research project ("On Preventing . . ." 1977, p. 82). While the faculty member is

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not expected to fill out time sheets, the university and the faculty need to develop procedures that ensure that research proposals give an accurate assessment of faculty involvement.

Consulting for government agencies or their contractors—A researcher involved in government-sponsored research who also serves as a consultant to a federal agency is subject to the Conflict of Interest Statutes (18 U.S.C. 202-209, as amended) and the President's memorandum, "Preventing Conflicts of Interest on the Part of Special Government Employees" (May 2, 1963). The researcher who consults for government contractors or prospective contractors in the same technical area as his government-sponsored research must be careful about giving advice biased by his other interests. The faculty member should make full disclosure of all interests that may affect his university or consulting activities.

The federal government also recognizes the potential for conflict-of-interest issues that may arise when faculty expertise is transferred from an academic setting to the government and back again. Large numbers of faculty are involved in such transfers. For example, since 1971 the Intergovernmental Personnel Mobility Program has enabled more than 2,600 faculty members from public higher education to serve for up to four years in the federal government (Sumberg 1979).

Given these circumstances, the Ethics in Government Act of 1978 drew considerable attention in the higher education community. The Act is intended to prevent former federal officials from inappropriately influencing federal decision-making on behalf of their current employer. To this end, the Act states that: (1) A former government employee may *never* participate in any case or policy matter in which he had a direct, personal, or substantial involvement while in government. (2) For two years after leaving the government a former top-level official may not aid, assist, counsel, or advise others in representing or dealing with his former agency or department on any matter for which he had direct or indirect responsibility. (3) No former employee may have contact with his former agency or department and former associates, either in writing or verbally, for one year after leaving government service.

Major higher education associations objected to these prohibitions as they would be applied to faculty and administrators. They argued that the law would deter experts in the academic world from entering government service because their employment options would be limited when they wanted to leave. Universities might be reluctant to hire former federal officials who could not speak with their federal agencies about current or pending grants and contracts (Steinbach 1979). In addition, these prohibitions might interfere with a faculty member's ability to conduct research that required contact with former federal employers (Sumberg 1979).

As amended in 1979, the Ethics in Government Act exempts full-time employees of colleges, universities, and tax-exempt medical research facilities from the one-year prohibition against any contact with their former federal employer or associates. The other provisions of the Act remain intact for faculty and administrators.

Access to Research Sources

Campus-based and free-standing research groups face an ethical dilemma in the conduct of their research: basic intellectual and scientific values require them to publish their findings, but ethical obligations to research sources and other considerations may necessitate that some data be kept confidential. Further, legal challenges to require the disclosure of confidential data may force a researcher to choose between his research commitments and judicial penalties. In such situations, researchers may be on either side of the issue; that is, they may either be in the position of wanting access to data that has not been made available, or face a challenge to their right to keep their research information confidential.

A recent Supreme Court decision on access to raw research data highlights some of the issues involved in confidentiality of research; at the same time, it establishes conditions under which public scrutiny of raw data may or may not be permitted.

At issue in *Forsham v. Harris* is whether research information developed in a federally-funded project is subject to public disclosure under the Freedom of Information Act (FOIA). (Under the FOIA, the public may petition most federal agencies for access to agency records.) The Court held that if the agency did not exercise its right of access to the raw research data—that is, if the federal agency did not actually acquire the data—then the data do not constitute an "agency record" under the FOIA, and the Court has no power to force the agency to take possession of the documents so that the public may examine them (*Forsham v. Harris* 1980).

The decision may have a substantial impact on research activity in the United States, since it affects all research projects funded by federal grants—a large number of which are housed in colleges and universities. It establishes conditions under which researchers may be required to subject their raw data, e.g., laboratory notebooks and computer tapes, to public scrutiny. The Court notes that HEW grant regulations permit the sponsoring agency to obtain raw data. But when the agency chooses not to obtain the data, as is usually the case, then the data remain the private possession of the researcher, not subject to public scrutiny. Researchers undertaking a federally sponsored project might want to establish ground rules with their agency on access to their raw data. A decision on access or non-access may affect how they conduct their research and keep their records.

The decision also tends to reinforce the generally accepted practice of keeping raw data private. However, this practice does deny to other researchers the opportunity for contesting results of a study, as exemplified by the facts in *Forsham*. In this case, a private, NIH-funded group of doctors and scientists studied the effectiveness of certain drugs in the treatment of diabetics. The Food and Drug Administration (FDA) relied on this project's findings when it restricted the labeling and use of certain drugs that were studied. A group of doctors who criticized the study sought to examine the raw data to make their own assessment and petitioned the FDA for access to the data. But the FDA did not possess the raw data (although as a division of HEW it might legally have obtained it). Thus, since the FDA had not exercised its right to access, the Court denied the contesting doctors' petition.

Problems over confidentiality of research did not begin with the FOIA, and *Forsham* settles few ethical problems for investigators. For example, in a study of the ethical problems in social science research, Carroll and Knerr (1976) found that confidentiality of research is a growing problem both in volume and in the complexity of the issues that are presented. Several developments contribute to this trend, including the general public's increasing sensitivity to the collection, storage, and use of personal data; and a growing tendency among social scientists to conduct research on current, applied social issues and to engage in participant/observation studies.

In their recommendations for coping with the problem of confidentiality, Carroll and Knerr (1976) recognize the conflicts that may develop among intellectual values, ethical requirements, and external legal pressures:

> The social science scholar has both an ethical and a professional obligation to make a full and complete disclosure of all non-confidential sources and data involved in his or her research so . . . [that] the work can be tested or replicated. The scholar, as a citizen, has an obligation to cooperate with [legal authorities]. [The scholar] has both an ethical and a professional duty to not divulge . . . the identity of confidential sources . . . and/or confidential data developed in the course of research. . . . Scholars must, however, exercise appropriate restraint in giving assurance of and in making claims as to the confidential nature of their sources and data (p. 17).

Intelligence Activities

In the 1960's, the public learned that the Central Intelligence Agency (CIA) had maintained a lengthy and clandestine relationship with the academic community that included: "*academics making introductions for intelligence purposes, . . .* intelligence collection while abroad, . . . academic research and writing

where CIA sponsorship is hidden." (Foreign and Military . . . 1976, p. 181. Emphasis in the original indicates that the material was substantially abridged at the request of executive agencies.) This disclosure has been a continuing source of concern to members of the academic community many of whom believe that covert use of faculty undermines the integrity and independence of the academic community, violates principles of academic freedom, and strains relationships between American and foreign scholars (Rendleman 1980; Bok 1978).

Representatives of the academic community described these concerns during 1978 congressional hearings on legislation to restructure the intelligence agencies. Their testimony illustrates the ethical dilemmas faculty face in a covert relationship with the CIA. First, faculty engaged in covert recruiting are asked to identify individuals, often foreign nationals studying on an American campus, who might work for the CIA. Such activity requires the professor to ascertain whether the student's views are compatible with CIA needs. One observer argues that this activity subverts "the trust and candor [needed] to promote the free and open exchange of ideas and information that are essential to inquiry and learning" (Bok 1978, p. 640).

Second, faculty who engage in covert activities abroad, whether in their professional capacity or acting as tourists, impinge on the integrity of other American scholars who work abroad and impair their ability to carry out their professional interests in foreign countries (Bok 1978).

Finally, the CIA and the universities disagree about whether the agency should adhere to the guidelines many universities are developing on the relationship between university employees and the CIA. (Campaign for . . . 1980). Harvard's guidelines, for example, require that university employees report in writing to a senior administrator when they have a consulting or ongoing relationship with the CIA. Further, university employees are prohibited from undertaking intelligence activities for the CIA (Bok 1978).

The CIA is not legally required to respect such institutional guidelines. In fact, recent congressional efforts to write a detailed charter for the CIA, which might have restricted the agency's covert university relationships, failed in the Senate (Mohr 1980b). Instead, the CIA has developed its own criteria for university-CIA relationships, which fail to satisfy institutional concerns. The "CIA Headquarters Regulation: Relationships with the U.S. Academic Community" (in Bok 1978, p. 660) holds in part:

> . . . CIA may enter into personal services contracts and other continuing relationships with full-time staff and faculty members of such institutions but in each case will suggest that the individual advise an appropriate senior official thereof of his CIA affiliation, unless security considerations preclude such a disclosure or the individual objects to making any third party aware of his relationship with the CIA.

This guideline is not legally binding, and the CIA admits to having violated its own regulations (Mohr 1980a).

Self-regulation

> In some of the nation's other major institutions, appeals to integrity and the higher virtues have followed some traumatic outbreak of outrageous ethical abuse. That is . . . not the case [in two new reports]. The academic community can now show the rest of the country that self-regulation and a reasoned and unhysterical approach to holding certain ethical standards is doable [sic] before an academic Watergate and is consistent with higher education's high social purposes (Bonham 1979, p. 69).

The need for self-regulation to preserve and protect academic values is perhaps most important to the academic profession, whose values are the premises on which the higher education community operates. At the heart of faculty values is the belief, articulated by the American Association of University Professors (AAUP), that the professor's "primary responsibility to his subject is to seek and to state the truth as he sees it" ("Statement on . . ." 1977, p. 65.) To this end, the academic seeks to hone his scholarly skills, to be intellectually honest, and to guard his freedom of inquiry ("Statement on . . ." 1977). The professor's other obligations—his relationship with his colleagues, his institution, his students, the outside community—flow from this basic responsibility (Shils 1978; Callahan 1979). Through these relationships and his own scholarly activities, the academic supports the free search for knowledge and transmits knowledge effectively.

Many higher education observers find that pressures within and outside the academic community tend to undermine this conception of faculty goals and responsibilities. Bowie (1979), for example, suggests that faculty may experience time conflicts between their scholarly responsibilities and outside fee-for-service opportunities. Hence, many academics indicate a renewed interest in developing self-regulatory methods to sustain and foster traditional academic values.

There is, however, little consensus among faculty about the best way to go about this endeavor. Most discussion has focused on the obvious route for professional self-regulation—a code of ethics. Questions arise as to whether a code alone would be adequate for efficient self-regulation. And if a code is to be developed, should it be done nationally? At each institution? By each discipline? How specific or how general should a code be? What enforcing mechanisms should be used?

Some observers question the wisdom of developing any code of ethics. They note a historical problem with such codes—that they tend to codify prejudices and interest. They also observe that all ethical issues cannot be anticipated; that professional associations may be arbitrary and capricious in disciplining members of the academic profession; and that ethical codes cannot prevent professional misconduct (Callahan 1979; Frankel 1978). Furthermore, Callahan (1979) comments:

> The more difficult moral dilemmas are those now posed by the very complexity of the university, by the increase in the range of ethical dilemmas that will face faculty members, and in the changing public expectations of the university. A code of ethics would be totally insufficient to deal with those problems (p. 7).

Instead, he recommends that institutions and professional organizations concerned with academic affairs periodically examine issues in higher education. At the campus level, debates, colloquia, and other forums could be organized to air important questions. Clear-cut ethical resolutions might not result from this effort, but such forums would also encourage the academic community to look at its responsibilities and to test whether student and public expectations of higher education are being met.

Projects focusing on codes of ethics and other such questions are being conducted by a number of organizations including the American Association for the Advancement of Science, American Council on Education, Center for the Study of Ethics in the Professions, Center for the Study of Values, and professional ethics committees at various disciplinary associations.*

Conclusion

The ethical issues cited here—conflict of interest, dissemination of research, intelligence activities on campus—are dilemmas that are often integral features of academic life. They cannot be resolved with simple answers, nor can they be avoided over the course of an academic career.

Ethical codes to deal with such issues may be difficult to develop and even harder to implement; even regular, organized discussions on faculty's ethical problems are not a common aspect of academic life. For these reasons, the literature on ethical issues facing faculty is scattered, of varying quality, and little known in the higher education community.

These difficulties should not represent an impassable obstacle to the development of faculty ethical guidelines. To aid faculty and administrators in dealing with increasingly complex ethical issues, the academic community has an obligation to foster forums to consider the development of guidelines that address faculty's ethical concerns.

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